Supreme Court of the United States

OCTOBER TERM, 1964

No. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE EDUCATION FUND, INC.,

Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER

Appellants-Intervenors,

Versus

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Appellees.

Brief on Behalf of Jim Garrison, Appellee, on Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

JIM GARRISON, DISTRICT ATTORNEY FOR THE PARISH OF ORLEANS

CHARLES R. WARD, FIRST EXECUTIVE ASSISTANT DISTRICT ATTORNEY FOR THE PARISH OF ORLEANS

LOUISE KORNS, ASSISTANT DISTRICT ATTORNEY FOR THE PARISH OF ORLEANS

JOHN VOLZ, ASSISTANT DISTRICT ATTORNEY FOR THE PARISH OF ORLEANS

Criminal Courts Building
2700 Tulane Avenue
New Orleans, Louisiana — 70119

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1964

NO. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE EDUCATION FUND, INC.,
Appellants,
BENJAMIN E. SMITH and BRUCE WALTZER
Appellants-Intervenors,

versus

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana.
Appellees.

Brief on Behalf of Jim Garrison, Appellee, on Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

STATEMENT OF THE CASE

On October 4, 1963 Benjamin E. Smith, Bruce Waltzer and James A. Dombrowski were arrested by state and local police and booked in the First District Police Station in New Orleans with violation of Article 26 (criminal conspiracy), Article 358 et seq. (Subversive Activities and Communist Control Law) and Article 390 et seq. (Communist Propaganda Control Law) of the Louisiana Criminal Code, L.R.S. 14:26, 358 et seq. and 390 et seq.

The three men were that same date paroled by the Honorable J. Bernard Cocke, Judge of Section E of the Criminal District Court for the Parish of Orleans.

Within a few days after their arrest Smith, Waltzer and Dombrowski filed a Petition for a Preliminary Examination in the Criminal District Court for the Parish of Orleans. See Art 154, La. Code Crim. Proc., L. R. S. 15:154. A hearing was promptly set for October 25, 1963. The Preliminary Examination was held on that day and the Honorable J. Bernard Cocke discharged Smith, Waltzer and Dombrowski without date on the ground that the State of Louisiana had established no facts to show that probable cause existed for the arrest of the three men. See proceedings no. 181-975 E on the docket of the Criminal District Court for the Parish of Orleans, Testimony and Notes of Evidence Taken on the Preliminary Examination in the Case of Benjamin E. Smith, Bruce C. Waltzer, and James A. Dombrowski versus the State of Louisiana.

No charges against Smith, Waltzer and Dombrowski were accepted from the police by the Office of the

District Attorney for the Parish of Orleans, and no affidavits against the three men were sworn out in the Clerk's Office of the Criminal District Court for the Parish of Orleans. However, in November of 1963 the three attorneys filed a civil suit in the United States District Court for the Eastern District of Louisiana asking that the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law be declared unconstitutional, and that an injunction issue restraining James H. Pfister, a Louisiana State Representative and Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, Russell R. Willie, a Major in the Louisiana State Police, Jimmie H. Davis, Governor of Louisiana, Jack P. F. Gremillion, Attorney General of Louisiana, Thomas D. Burbank, Commanding Officer of the Division of Louisiana State Police, and Jim Garrison, District Attorney for the Parish of Orleans, from enforcing the laws in question.

A three-judge United States District Court denied the application for injunction against the Louisiana criminal prosecutions and dismissed the suit. Wisdom, Circuit Judge dissented. *Dombrowski v. Pfister*, 227 F.Supp. 556 (E.D. La. 1964).

On January 25, 1964 the Grand Jury for the Parish of Orleans indicted James A. Dombrowski for failing to register with the Louisiana Department of Public Safety as a member of the Southern Conference Educational Fund, an allegedly communist-front organization, and for participating in the management of an allegedly subversive organization, the Southern Conference Educational Fund. Dombrowski was im-

mediately released on a $250 bond, the case was allotted to Section B of the Criminal District Court for the Parish of Orleans, and on February 18, 1964 Dombrowski filed a Motion to Suppress Evidence and a Plea of Res Judicata. On June 12, 1964 the Motion to Suppress and Plea of Res Judicata were maintained by the trial judge in Section B, the Honorable George P. Platt. See proceedings no. 183-459 on the docket of the Criminal District Court for the Parish of Orleans. The State of Louisiana moved for an appeal.

On January 29, 1964 the Grand Jury for the Parish of Orleans indicted Benjamin Smith for failing to register with state authorities as a member of the National Lawyers Guild, for participating in the management of the Southern Conference Educational Fund, and for failing to register as a member of Southern Conference. The case was allotted to Section E of the Criminal District Court for the Parish of Orleans, where it is presently awaiting a decision on a Motion to Quash filed by Smith raising constitutional questions affecting the statutes under which he was charged and the indictment itself. See proceedings no. 183-458 on the docket of the Criminal District Court for the Parish of Orleans.

Bruce Waltzer was indicted by the Grand Jury for the Parish of Orleans on January 29, 1964 for being a member of the National Lawyers Guild, an allegedly communist-front organization. The case was allotted to Section C of the Criminal District Court for the Parish of Orleans, where it is now pending, awaiting pleadings which Waltzer requested time to file. See proceedings no. 183-457 on the docket of the Criminal District Court for the Parish of Orleans.

From the foregoing statement of facts it is abundantly clear that James A. Dombrowski, Benjamin E. Smith and Bruce Waltzer, appellants and appellants-intervenors herein, are being fairly treated in the Louisiana courts. They have at no time been denied bail or a speedy hearing, and the only judgments which the Louisiana courts have rendered in their cases have been in their favor.

It is not an accurate statement of the matter to say that the present civil action in the federal courts was brought *before* any criminal proceeding was begun in the state courts. The arrest of Smith, Waltzer and Dombrowski on October 4, 1963 by state and local police and the Preliminary Examination granted them on October 25, 1963 in the Criminal District Court for the Parish of Orleans mark the initiation of the Louisiana criminal proceedings, and it was not until November 12, 1963 that the present civil action was filed in the federal district court seeking a declaratory judgment declaring the Louisiana laws in question to be unconstitutional and an injunction restraining the enforcement of those laws — the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law. Consequently there is a clash of courts, unlike the situation which existed in *Baggett v. Bullitt*, infra.

In a spirit of comity and through agreement between the District Attorney for the Parish of Orleans and Mssrs. Smith, Waltzer and Dombrowski, all state court proceedings pending against appellant and intervenors have been held in abeyance since this Court noted probable jurisdiction of the instant case on June 15, 1964, awaiting final disposition of the matter by

this Honorable Court. Except for this fact, the three cases involving Smith, Waltzer and Dombrowski in the Louisiana courts would now undoubtedly have reached a definitive judgment, or at least be lodged in the Louisiana Supreme Court on appeal.

ARGUMENT

THE FEDERAL COURTS SHOULD ABSTAIN IN THE PRESENT CASE

1. Doctrines of Equity and Federal-State Comity Sharply Limit Federal Injunction of State Court Proceedings.

As this Honorable Court so ably stated in *Spielman Motor Co. v. Dodge*, 295 U.S. 89, 95-96, the general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional; to justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights.

> "We have said" this Court announced in *Spielman*, "that it must appear that 'the danger of irreparable loss is both great and immediate'; otherwise, the accused should first set up his defense in the state court, even though the validity of a statute is challenged. There is ample opportunity for ultimate review by this Court of federal questions. *Fenner v. Boykin*, 271 U.S. 240, 243, 244."

In *Watson v. Buck*, 313 U.S. 387, this Court quoted with approval from *Spielman* and affirmed the refusal of a three-judge federal district court to enjoin certain sections of a Florida statute regulating the business of persons holding music copyrights, on the ground, *inter alia*, that the Florida Supreme Court had never yet passed upon the constitutionality of the Florida statutes and that it was "highly desirable that it should have an opportunity to do so."

In *Douglas v. Jeannette*, 319 U.S. 158, a number of Jehovah's Witnesses brought suit in the United States District Court for Western Pennsylvania to restrain threatened criminal prosecution of themselves in the state courts by the City of Jeannette for violation of a city ordinance which prohibited the solicitation of orders for merchandise without first procuring a license from the city authorities and paying a license tax, the basis of the federal suit being the contention, as in the instant case, that the ordinance was an unconstitutional abridgment of free speech. The Witnesses also alleged, as do appellants herein, that their federal suit arose under the Civil Rights Act then in effect. On certiorari this Court held that the Witnesses had failed to establish a cause of action in equity and that consequently they were not entitled to have the state proceedings enjoined. The following language from the decision is pertinent here:

> "It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a

ground for equity relief since the *lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. Davis & Farnum Mfg. Co. v. Los Angeles*, 189 U.S. 207; *Fenner v. Boykin*, 271 U.S. 240. *Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted.* Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger of irreparable injury 'both great and immediate.' *Spielman Motor Co. v. Dodge*, 295 U.S. 89, 95, and cases cited; *Beal v. Missouri Pacific R. Corp.*, 312 U.S. 45, 49, and cases cited; *Watson v. Buck*, 313 U.S. 387; *Williams v. Miller*, 317 U.S. 599." (Emphasis ours)

2. The Civil Rights Act Must Be Construed So As to Respect the Proper Balance Between the States and the Federal Government in Law Enforcement. Screws v. United States, 325 U.S. 91, 108.

In *Stefanelli v. Minard*, 342 U.S. 117, petitioners brought a civil suit in the federal district court seeking an injunction against the use, in pending state criminal proceedings against them in New Jersey, of evidence allegedly seized in an unconstitutional

search by state police. For basis to their suit they relied on the Civil Rights Act then in effect, R.S. § 1979, 8 U.S.C. § 43. The federal district court dismissed the suit; the Court of Appeals and this Court affirmed. In the course of its opinion this Court reiterated its conviction that the Civil Rights Act "was not to be used to centralize power so as to upset the federal system", citing *Collins v. Hardyman*, 341 U.S. 651, 658, and continuing thus:

> "Discretionary refusal to exercise equitable power under the Act to interfere with State criminal prosecution is one of the devices we have sanctioned for preserving this balance. . . .
>
> "* * *
>
> "The consequences of exercising the equitable power here invoked are not the concern of a merely doctrinaire alertness to protect the proper sphere of the States in enforcing their criminal law. If we were to sanction this intervention, we would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law — with its far-flung and undefined range — would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, in the creation of an unfair trial

atmosphere, in the misconduct of the trial court — all would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution."

In *Cleary v. Bolger,* 371 U.S. 392, this Court refused to enjoin a state officer from testifying in a New York criminal prosecution and administrative proceeding for revocation of a longshoreman's license, reaffirming the principle that courts of equity traditionally have refused, except in rare instances, to enjoin criminal prosecutions, and quoting from *Stefanelli* with approval.

In the petitions filed in federal district court in the present proceeding appellants maintain that they are being deprived of their civil rights because they are being prosecuted in the Louisiana courts when no basis for their prosecution exists, *i.e.*, merely as a harassment The simple remedy for this state of facts, if indeed it exists, is for appellants to urge in the Louisiana state courts that they are being denied the Equal Protection of the Laws guaranteed to them by the Fourteenth Amendment to the United States Constitution. See *Yick Wo v. Hopkins,* 118 U.S. 356. Appellants do not claim that they have been threatened with any injury other than that incidental to every criminal proceeding, or that a federal court of equity by withdrawing the determination of the constitutional issues which they have raised, or of their guilt, from the Louisiana courts could afford them any protection which they could not secure by prompt trial

in the state courts. Compare *Hague v. C. I. O.*, 307 U.S. 496 (Local officials broke up meetings of the complainants and in some instances forcibly deported them from the state without trial.).

3. The Circumstances Set Out in Appellants' Petitions Are Not Exceptional and Do Not Amount to Irreparable Injury.

Although the general rule is that a court of equity will not restrain criminal proceedings in order to try the same right that is at issue in the criminal courts, an exception to this rule exists when the prevention of criminal prosecutions under allegedly unconstitutional statutes is essential to the safeguarding of rights of property, and when the circumstances of the case are exceptional and the danger of irreparable loss is both great and immediate. See *Cline v. Frink Dairy Co.*, 274 U.S. 445, 451-452, and authorities there cited.

As was pointed out above, the only "exceptional circumstances" or "danger of irreparable loss" which is alleged by appellants in their petitions filed herein in the federal district court are the circumstances and dangers incidental to any criminal proceeding. They do not contend that their meetings have been broken up or that they have been threatened with or received any physical harm, see *Hague v. C. I. O.*, supra; nor do they maintain that they are being intimidated in their efforts to practice their profession as lawyers, see *Jordan v. Hutcheson*, 323 F.2d 597 (4th Cir. 1963); nor do they contend that the statutes under which they have been indicted are special legislation passed to retard or block desegregation, see

Bush v. Orleans Parish School Board, 194 F.Supp. 182 (E.D. La. 1961).

The plain fact is that appellants are subjected to no exceptional circumstances and are threatened with no irreparable loss because of the Louisiana criminal prosecutions in which they are presently involved.

4. The Louisiana Laws At Issue Are Ordinary Criminal Statutes Which Have Not Been Construed By The Louisiana Supreme Court.

Unlike the emergency legislation involved in *Bush v. Orleans Parish School Board*, 194 F.Supp. 182 (E.D. La. 1961), the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law* involved in the case at bar have existed in Louisiana in one form or another since the early fifties. See Act 506 of 1952 of the State of Louisiana requiring communists and members of communist front organizations to register, etc.; Act 623 of 1954 of the State of Louisiana making it a crime to commit or advocate acts intended to overthrow the Constitution of the United States or of Louisiana; *State v. Jenkins*, 236 La. 300, 107 So.2d 648.

As the Louisiana laws here at issue have been in existence for ten or twelve years, it cannot intelligently be argued that they constitute special legislation passed to impede desegregation or to harass integrationists. See *Bush v. Orleans Parish School Board*, 194 F.Supp. 182 (E.D. La. 1961). The chal-

*See Arts. 358-389, 390-390.8, La. Crim. Code, L.R.S. 14:358-389, 390-390.8.

lenged statutes in the present proceedings are ordinary criminal provisions. Furthermore, the question of the constitutionality of these statutes from the point of view of preciseness of language, overbreadth, etc., has never been presented to the Louisiana Supreme Court for determination, although in 1958 that court held that Articles 366-380 of the Louisiana Criminal Code, L.R.S. 14:366-380, the Louisiana Subversive Activities Law, had been superseded by congressional enactment of the Smith Act, 18 U.S.C., Section 2385, and dismissed a bill of information charging an accused with being a member of the Communist Party on the authority of *Commonwealth of Pennsylvania v. Nelson*, 350 U.S. 497. However, the position of the Louisiana Supreme Court on this issue of supersession was reexamined last year in *State v. Cade*, 244 La. 534, 153 So.2d 382, in the light of this Court's decision in *Uphaus v. Wyman*, 360 U.S. 72. At the present time, consequently, it can be said that the Louisiana Supreme Court has not definitely passed on the constitutional problems of pre-emption, vagueness, overbreadth, etc., which appellants have raised to date in the state criminal proceedings and in their civil suit in federal court.

Considerations of comity and a due regard for the reciprocal niceties of state-federal relationships would appear to require that in the present proceedings the federal courts abstain from passing on the constitutionality of the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law, and thus allow the Louisiana Supreme Court to pass on the constitutionality of these Louisiana laws, particularly now that

the constitutional questions have been raised by appellants in the Louisiana criminal district court.

5. The Instant Case Is Clearly Distinguishable From Baggett v. Bullitt.

The circumstances surrounding the case at bar cry out for abstention on the part of the federal courts. Unlike the situation which prevailed in the recent case of *Baggett v. Bullitt*, 377 U.S. 360, the two Louisiana statutes involved here will be construed in the Louisiana courts with reference to a concrete, particularized situation, so necessary to bring into focus the impact of the laws on constitutionally protected rights of speech and association. Here the Louisiana courts would not have to construe the assailed laws abstractly; on the contrary, it is the federal court in the instant proceedings which would have to construe these laws in the abstract.

Furthermore, the instant matter poses problems of comity not present in *Baggett*. Here, unlike *Baggett*, proceedings were begun against appellants by the State of Louisiana before appellants filed their civil suit in the United States district court.

6. The Cases Relied On by Circuit Judge Wisdom In His Dissent Are Inapposite.

In urging his two bretheren of the district court not to abstain Circuit Judge Wisdom relied on a number of cases which are inapposite in the instant case.

Jordan v. Hutcheson, 323 F.2d 597 (4th cir. 1963), was a class action by Negro attorneys against a Com-

mittee of the Virginia State Legislature to enjoin the committee members and others from taking unlawful action to harass and intimidate the plaintiff lawyers and their clients. No criminal prosecutions had been begun against the Negro attorneys by the State of Virginia when the federal suit was filed, nor was the federal court asked to invalidate a Virginia statute.

Bush v. Orleans Parish School Board, 194 F.Supp. 182, (E.D. La. 1961), was a suit by the United States to enjoin the enforcement of two emergency measures passed by the Louisiana Legislature in the Second Extraordinary Session of 1961 in an effort to block integration of the schools in Orleans Parish. The statutes in *Bush,* unlike those in the instant case, were not ordinary criminal provisions, nor had criminal proceedings been instituted under those statutes in the Louisiana courts.

In *Aelony v. Pace,* 32 L.W. 2215, a federal district court enjoined the prosecution under Georgia's unlawful assembly and insurrection statutes of persons who were being held in jail without bond while awaiting presentment of charges against them to the grand jury, a factual situation clearly having no relation to the events of the instant case.

In *Browder v. Gayle,* 142 F.Supp. 707 (M.D. Ala. 1956), as in *Morrison v. Davis,* 252 F.2d 102 (5th Cir. 1958), the state or local statutes struck down by the federal courts were patently unconstitutional under the decision of this Court in the *School Segregation Cases,* 347 U.S. 483, in which the separate but equal doctrine was repudiated. No study of the statutes

themselves was required. The reverse is true in the instant case. There is nothing inherently unconstitutional about state subversive activities statutes.

In *United States v. Wood*, 295 F.2d 772 (5 Cir. 1961), an injunction was granted by the federal court to delay the prosecution by the State of Mississippi of a Negro who had been arrested for breach of the peace while helping other Negroes to register for voting. The Fifth Circuit opinion points out that under the particular facts of the case adequate safeguards did not exist in the state criminal system to protect the constitutional rights of the accused and that consequently interference in the state criminal system was warranted. In the present case adequate safeguards exist in the Louisiana courts.

In *City of Houston v. Jas. K. Dobbs*, 232 F.2d 428 (5 Cir. 1956), an established purveyor of food would have, on the effective date of a Houston ordinance, suffered the immediate loss of all its customers and business in Houston. Under the peculiar circumstances of the case the federal court was of the view that it was justified in finding that immediate and irreparable injury would result if the enforcement of the ordinance was not stayed.

In *Denton v. City of Carrollton, Georgia*, 235 F.2d 481 (5 Cir. 1956), a labor union agent would have had to pay $32,300 to test the validity of a city ordinance establishing a tax with punitive qualities, with small chance of ever being able to recover the sum paid. Under these circumstances the federal court held that there was substantial basis for equitable relief.

Not one of the above cases involves a situation in which a state was proceeding in an orderly manner under a specific criminal statute of long standing and through established and fair criminal process providing adequate safeguards for the protection of constitutional rights, as in the instant proceeding. Further, the parties seeking relief in the federal court in the cases relied on by Judge Wisdom were threatened with an immediate and irreparable loss of liberty or property, which is not the situation in the instant proceeding.

In contrast to the cases discussed immediately above, appellee is of the view that the following decisions are pertinent and support appellee's contention that abstention is indicated herein:

In *Fenner v. Boykin*, 271 U.S. 240, this Court said:

> "*Ex parte Young*, 209 U.S. 123, and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under *extraordinary circumstances where the danger of irreparable loss is both great and immediate.* Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves

a challenge of the validity of some statute, *unless it plainly appears that this course would not afford adequate protection.*" (Emphasis supplied)

In *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, the Pullman Company and various railroads brought an action in the federal district court to enjoin an allegedly illegal and unconstitutional regulation by the Texas Railroad Commission which would require that Pullman sleeping cars be continuously in charge of an employee "having the rank and position of a Pullman conductor." Some of the Texas trains of the railroads involved had but one Pullman sleeping car which was in charge of a colored porter subject to the control of the train conductor, and Pullman porters intervened in the action, urging that it discriminated against Negroes in violation of the Fourteenth Amendment. This Court held that the federal district court should abstain in the matter pending decision of the question in the Texas courts, saying:

"The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction. There have been as many and as variegated applications of this supple principle as the situations that have brought it into play. . . . Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law, *Fenner v. Boykin*, 271 U.S. 240; *Spielman Motor Co. v. Dodge*, 295 U.S. 89; or the

administration of a specialized scheme for liquidating embarrassed business enterprises, *Pennsylvania v. Williams*, 294 U.S. 176, or the final authority of a state court to interpret doubtful regulatory laws of the state, *Gilchrist v. Interborough Co.*, cf. *Hawks v. Hamill*, 288 U.S. 52, 61. These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion,' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary. . . This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers. . . .

"Regard for these important considerations of policy in the administration of federal equity jurisdiction is decisive here. If there was no warrant in state law for the Commission's assumption of authority there is an end of the litigation; the constitutional issue does not arise. The law of Texas appears to furnish easy and ample means for determining the Commission's authority. . . . In the absence of any showing that these obvious methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands. . . ."

In *A. F. of L. v. Watson*, 327 U.S. 582, this Court held that various national and local labor organizations operating in Florida had made a showing of clear and imminent irreparable injury in their suit in federal district court to enjoin enforcement of a provision of the Florida constitution, but that nevertheless the federal court erred in passing on the merits of the controversy involving constitutional issues concerning the meaning of a provision of the Florida constitution, for the reason that this constitutional provision *had never been construed by the Florida courts*. See also *Federation of Labor v. McAdory*, 325 U.S. 450.

Albertson v. Millard, 345 U.S. 242, is very similar to the instant matter. There five days after enactment of the Michigan Communist Control Act of 1952 the Communist Party of Michigan sued in a federal district court for a declaratory judgment that the new law violated the United States Constitution, and also asked for an injunction against its enforcement. A similar suit was brought in a Michigan court seeking a declaratory judgment declaring the act unconstitutional. This Court ordered that the proceedings in the federal district court be held in abeyance pending construction of the statute by the state courts, saying that *it was appropriate that the state courts construe the Michigan statute* before the *federal district court took any further action in the matter*. See also *Government Employees v. Windsor*, 353 U.S. 364.

In *Harrison v. N.A.A.C.P.*, 360 U.S. 167, the National Association for the Advancement of Colored People brought suit in a federal district court attacking the constitutionality of five Virginia statutes and ask-

ing that their enforcement be enjoined. As in the instant case, the Attorney General of Virginia and other defendants opposed the federal action on the ground, among others, that the federal court should not exercise its jurisdiction to enjoin the enforcement of state statutes which had not been construed by the state courts. The federal district court found three of the Virginia statutes to be unconstitutional and enjoined their enforcement against the NAACP; it also held the two other state statutes to be vague and ambiguous but withheld judgment on them pending their construction by the state courts. This Court vacated the district court judgment on the premise that the lower court should have abstained from deciding the merits of the issues tendered it, so as to afford the Virginia courts a reasonable opportunity to construe the statutes in question. The following significant language appears in this Court's opinion in *Harrison:*

> "This now well established procedure (i.e., abstention) is aimed at the avoidance of unnecessary interference by the federal court with proper and validly administered state concerns, a course so essential to the balanced working of our federal system. To minimize the possibility of such interference a 'scrupulous regard for the rightful independence of state governments . . . should at all times actuate the federal courts,' *Matthews v. Rodgers*, 284 U.S. 521, 525, as their 'contributions . . . in furthering the harmonious relation between state and federal authority. . . .' *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 501. In the service of this doctrine, which this Court has applied in many differ-

> ent contexts, no principle has found more consistent or clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. . . . This principle does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise; *it serves the policy of comity inherent in the doctrine of abstention; and it spares the federal courts of unnecessary constitutional adjudication.*" (Emphasis supplied)

Appellee is of the respectful view that the foregoing decisions of this Court fully support the decision of the federal district court herein to abstain from passing on the constitutionality of the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law.

CONCLUSION

Jim Garrison, District Attorney for the Parish of Orleans and appellee herein, respectfully submits that the judgment of the United States District Court for the Eastern District of Louisiana, denying the application for injunction and dismissing this suit, is correct and should be affirmed.

JIM GARRISON,
DISTRICT ATTORNEY
FOR THE PARISH OF
ORLEANS

CHARLES R. WARD,
FIRST EXECUTIVE
ASSISTANT DISTRICT
ATTORNEY FOR THE
PARISH OF ORLEANS

LOUISE KORNS,
ASSISTANT DISTRICT
ATTORNEY FOR THE
PARISH OF ORLEANS

JOHN VOLZ,
ASSISTANT DISTRICT
ATTORNEY FOR THE
PARISH OF ORLEANS.

Criminal Courts
Building, 2700 Tulane
Avenue, New Orleans,
Louisiana - 70119